

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

As the 25th edition of the *California Special Education Programs – A Composite of Laws* goes to press, major amendments to Title 5 of the California Code of Regulations are being adopted by the State Board of Education. As part of California's eligibility documents and grant application for funds under Part B of the Individuals with Disabilities Education Act (IDEA) (20 USC et seq.), the state is required to make revisions to the regulations pertaining to confidentiality of information about individuals with exceptional needs (new sections 440-450). In addition, sections are being amended or added to clarify definitions (3001); address written procedures for single-district special education local plan areas (SELPA's) for program-monitoring purposes (3015); clarify child find and identification requirements for highly mobile individuals with exceptional needs, such as migrant and homeless children (3020); address individualized education program (IEP) accountability (3041); clarify that each local educational agency must ensure that a free appropriate public education is available to any individual with exceptional needs who needs special education and related services, even though the individual is advancing from grade to grade (3044); clarify that the IEP team determines when modifications to a positive behavior intervention plan would require an IEP team meeting, and clarify that a "functional analysis assessment" does not have the same meaning as a "functional behavioral assessment" used for discipline purposes under the IDEA (3052); clarify that due process procedures in Chapter 5 (commencing with Section 56500) of the Education Code are inapplicable to complaints that a local educational agency has failed to meet specified provisions of services to children with disabilities enrolled by their parents in private schools (3080); clarify that if a due process hearing officer requests an independent educational assessment as part of a hearing, the cost of the assessment shall be at public expense (3082); specify that the notice for a due process hearing requested by a parent, guardian, or an attorney representing the child must remain confidential (3082.1); and clarify the qualifications for due process hearing officers (3082.5) and qualifications for mediators, including the selection process for mediators (3086.5). A copy of the final regulations will be posted on the California Department of Education's web site at <http://www.cde.ca.gov/spbranch/sed/lawsreg2.htm> and will be made available by the Special Education Division upon request.

During 2002, eight legislative bills were chaptered into law amending, adding, or repealing special education provisions under Part 30 of the Education Code.

The measures are as follows:

Senate Bill 1677 (Alpert)	Chapter 785, Statutes of 2002 January 1, 2003
Senate Bill 2012 (Margett)	Chapter 585, Statutes of 2002 January 1, 2003
Assembly Bill 1818 (Committee on Education)	Chapter 1168, Statutes of 2002 September 30, 2002
Assembly Bill 1859 (Papan)	Chapter 492, Statutes of 2002 January 1, 2003
Assembly Bill 1895 (Wright)	Chapter 944, Statutes of 2002 January 1, 2003

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

Assembly Bill 2326 (Frommer)	Chapter 653, Statutes of 2002 January 1, 2003
Assembly Bill 2781 (Oropeza)	Chapter 1167, Statutes of 2002 September 30, 2002
Assembly Bill 3034 (Committee on Judiciary)	Chapter 664, Statutes of 2002 January 1, 2003

Senate Bill 1677 (Alpert) revised the definition of “parent” in Section 56028 of the Education Code by adding language to include a foster parent as a parent under specified circumstances. The new language says “parent” includes “a foster parent if the natural parents’ authority to make educational decisions on the child’s behalf has been specifically limited by court order in accordance with subsection (b) of Section 300.20 of Title 34 of the Code of Federal Regulations.”

The measure also amended Section 7579.5 of the Government Code, relative to surrogate parents. The amendments do the following:

- Require a local educational agency to appoint a surrogate parent for a child in accordance with Section 300.515(c)(2)(iii) of Title 34 of the Code of Federal Regulations. (The federal citation requires the person selected as a surrogate parent to have knowledge and skills that ensure adequate representation of the child.)
- Clarify that a local educational agency shall appoint a surrogate parent in instances where the child has no responsible adult to represent him or her pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055 of the Education Code.
- Clarify that if the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.
- Add language requiring the surrogate parent to meet with the child “at least one time” and provide that the surrogate parent may also meet with the child on additional occasions, attend the child’s individualized education program meetings, review the child’s educational records, and consult with persons involved in the child’s education.
- Add language specifying that the surrogate parent shall comply with federal and state laws pertaining to the confidentiality of pupil records and information and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.
- Provide that the surrogate parent may resign from his or her appointment only after he or she gives notice to the local educational agency.
- Require the local educational agency to terminate the appointment of a surrogate parent if the person is not properly performing the duties of a surrogate parent.
- Clarify that the surrogate parent may represent the child until (1) the child is no longer in need of special education; (2) the minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself or is deemed by a court to be incompetent; (3) another responsible adult is appointed to make

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

educational decisions for the minor; or (4) the right of the parent or guardian to make educational decisions for the minor is fully restored.

- Require the Department of Education to develop a model surrogate parent training module and manual that shall be made available to local educational agencies. (Note: SB 1677 did not include an appropriation for the training module and manual.)

SB 1677 also amends sections 358.1, 366, 366.1, 366.3, 706.5, and 727.2 of the Welfare and Institutions Code, all related to whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child who is a ward of the court and requiring the court, in specified instances, to appoint a responsible adult to make those educational decisions.

Senate Bill 2012 (Margett) aligned special education interagency provisions in the Education Code with the federal IDEA and implementing regulations. The measure amended Section 56475 clarifying that interagency agreements or joint regulations that include responsibilities for the provision of special education and related services must be written in accordance with paragraph (12) of subsection (a) of Section 1412 of Title 20 of the United States Code and Section 300.142 of Title 34 of the Code of Federal Regulations. The bill added Section 56476 to the Education Code requiring the Governor, or the designee of the Governor, to ensure that each agency under the Governor's jurisdiction enters into an interagency agreement with the Superintendent of Public Instruction to ensure that all services that are needed to ensure a free appropriate public education are provided for individuals with exceptional needs.

The bill also amended Section 7579 of the Government Code specifying that any public agency other than an educational agency that places a disabled child or a child suspected of being disabled in a facility out of state without the involvement of the school district, special education local plan area, or county office of education in which the parent or guardian resides shall assume all financial responsibility for the child's residential placement, special education program, and related services in the other state unless the other state or its local agencies assume responsibility.

Assembly Bill 1818 (Assembly Committee on Education), an urgency measure, amended 13 sections and repealed one section of the Education Code that pertain directly to special education programs. Nine other sections were amended, added, or repealed pertaining to the State Diagnostic Centers. The following is a summary of affected sections impacting Part 30 of the Education Code:

- Section 56001, legislative intent language pertaining to an education appropriate to the needs of an individual with exceptional needs, strikes references to sections 51215 and 51216.
- Section 56100, relative to State Board of Education approval of local plans, strikes reference in subdivision (b) that local plans may be approved for up to four years.
- Section 56129, relative to the Superintendent of Public Instruction maintaining State Special Schools, adds a reference to the State Diagnostic Centers.

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

- Section 56130, relative to the Superintendent of Public Instruction developing an annual program evaluation plan of special education programs, strikes reference to the annual plan and substitutes a biennial performance report of special education programs.
- Section 56200, relative to local plan components, strikes reference to instructional personnel service units and support services in subdivision (e) pertaining to the annual budget plan and adds “state and federal funds in support of special education programs, services.” The section amendment also clarifies that the annual budget plan shall be adopted at a public hearing held by a SELPA under the direction of the SELPA governance body. It further provides that the governance body may designate a local educational agency board, a county office board, or the responsible local agency board to hold the hearing.
- Section 56205, relative to local plan policies, procedures, and programs, requires that each SELPA submitting a local plan to the Superintendent of Public Instruction shall “assure” rather than “demonstrate,” in conformity with federal law, that it has policies, procedures, and programs that are consistent with state laws, regulations, and policies governing specified items. It also recasts language relative to including copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56195.1.
- Section 56345, relative to individualized education program contents, strikes references to Section 51215 in subdivisions (b)(1) and (d).
- Section 56361, relative to the continuum of programs options, strikes reference to “centers” in subdivision (d).
- Section 56392, relative to recognition for education achievement or completion of program, strikes reference to Section 51215.
- Section 56393, relative to the Advisory Commission on Special Education study and report on the practice of awarding certificates or documents of educational achievement or completion and diplomas, was repealed.
- Section 56441.1, relative to services provided to preschool children in coordination with other agencies, strikes language about counting the preschool child under the funding cap prescribed by Section 56447.
- Section 56473, relative to Project Workability funding, corrects State Budget Act item reference for federal funds (Item 6100-161-0890).
- Section 56836.155, relative to the calculation of the incidence multiplier for each SELPA, adds the following language to subdivision (d)(3): “For purposes of this paragraph for the 2001-02 and 2002-03 fiscal years, the amount, if any, received pursuant to Section 56836.159 shall be excluded from the funding level per unit of average daily attendance for a special education local plan area.”
- Section 56836.23, relative to funds for regionalized services and program specialists, substitutes the word “ensure” for “assure” in the first paragraph and strikes reference to subdivision (c) in the citation of Section 56205.

AB 1818 also amended or added sections 59201, 59203, 59204.5, 59210, and 59220 of the Education Code, pertaining to the State Diagnostic Centers, and repealed sections 59204, 59211, 59220, and 59223.

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

Assembly Bill 1859 (Papan), an omnibus special education measure, aligned various provisions in the California Education Code with the Individuals with Disabilities Education Act (IDEA) and regulations. The Governor had vetoed three earlier versions of the omnibus bill since 1999.

Specifically, AB 1859:

- ▶ Added Section 56021.1 to define the term “consent” as it applies to procedural safeguards to conform with the IDEA at 34 CFR 300.500(b).
- ▶ Amended Section 56026 to tighten up eligibility criteria for special education for individuals between the ages of 19 and 21 by specifying that the individual has not graduated from high school with a regular high school diploma. This language conforms to the IDEA at 34 CFR 300.122(a)(3) providing an exception to a free appropriate public education for certain ages.
- ▶ Added Section 56026.1 providing that an individual with exceptional needs who graduates from high school with a regular high school diploma is no longer eligible for special education and related services and defining a “regular high school diploma” for purposes of the section. This language also conforms to the IDEA at 34 CFR 300.122(a)(3) providing an exception to making a free appropriate public education available to all children with disabilities.
- ▶ Amended Section 56043 by adding to the general listing of primary timelines affecting special education programs the requirement in Section 56345(a)(8), regarding a one year notice in the pupil’s individualized education program (before the pupil reaches the age of 18), that the pupil has been informed of his or her rights that will transfer to the pupil upon reaching age 18. This language conforms to the IDEA at 20 USC 1415(m) and 34 CFR 300.517.
- ▶ Amended Section 56125 specifying that the Superintendent of Public Instruction shall, as part of monitoring the implementation of local plans, ensure that the least restrictive environment requirements pursuant to 34 CFR 300.550 are implemented. This language conforms to the IDEA at 34 CFR 300.556.
- ▶ Added Section 56138 requiring the Superintendent of Public Instruction to develop, and the State Board of Education to adopt, performance goals and performance indicators for individuals with exceptional needs. This language conforms to the IDEA at 20 USC 1412(a)(16) and 34 CFR 300.137.
- ▶ Amended Section 56171 clarifying that the activities for identifying (child find) and assessing children with disabilities in private schools shall be comparable to activities undertaken for children with disabilities in public schools. The amendment specifies that local educational agencies shall consult with appropriate representatives of private school children with disabilities on how to carry out the child find and assessment activities. This language conforms to the IDEA at 34 CFR 300.451(a) and (b).
- ▶ Amended Section 56173 specifying what may and may not be included in the expenditure formula for providing special education and related services to private school children with disabilities. This language conforms to the IDEA at 34 CFR 300.453-462.
- ▶ Added Section 56174.5 clarifying that “no” private school child with a disability is entitled to any service the child would receive if enrolled in a public school, and may receive a different amount of services than individuals with exceptional needs in public schools receive. This language conforms to the IDEA at 34 CFR 300.454 and 300.455.

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

- ▶ Amended Section 56175 adding “that the private placement is appropriate” to the existing instance when a court or a due process hearing officer may require the local educational agency to reimburse the parent for the cost of an enrollment of a child with a disability in a private school or facility when the public agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment. The section was also amended adding federal language that “a parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a local educational agency.” This language conforms to the IDEA at 34 CFR 300.403(c).
- ▶ Amended Section 56176 clarifying that the cost of reimbursement for a child with a disability enrolled in a private school may be reduced or denied if prior to the parent’s removal of the child with a disability from the public school, the local educational agency informed the parent “through the notice requirements described in paragraph (1) of subdivision (a) of Section 56500.4” of its intent to assess the child, including a statement of the purpose of the assessment that was appropriate and reasonable, but the parent did not make the child available for the assessment. This language conforms to the IDEA at 34 CFR 300.403(d)(2).
- ▶ Added Section 56304 affording parents the right to participate in meetings on the identification, assessment, and educational placement of their children and clarifying what constitutes a meeting. This language conforms to the IDEA at 20 USC 1414(f) and 34 CFR 300.501(a)(2), (b) and (c).
- ▶ Amended Section 56320 addressing assessment procedures, including clarifying that no single procedure is used as the sole criterion for determining whether a pupil is an individual with exceptional needs and for determining an appropriate educational program for the pupil. The amendment clarifies that the pupil is assessed in all areas related to the suspected disability, including, if appropriate, general intelligence and communicative status. This language conforms to the IDEA at 20 USC 1414(b)(2) and (3); 34 CFR 300.532 (f), (g), and (h), and 300.533.
- ▶ Amended Section 56321 clarifying that parental consent for initial assessment may not be construed as consent for initial placement or initial provision of special education and related services to an individual with exceptional needs. This language conforms to the IDEA at 34 CFR 300.505(a)(2).
- ▶ Amended Section 56329 clarifying that if the parent requests an independent educational assessment, the local educational agency may ask the parent for the reason he or she objects to the public assessment; however, the explanation by the parent may not be required and the local educational agency may not unreasonably delay either providing the independent educational assessment at public expense or initiating a due process hearing to defend the public assessment. In addition, the amendment requires the local educational agency to provide to parents, upon request for an independent educational assessment, information about where an independent educational assessment may be obtained and the local educational agency’s criteria applicable to independent educational assessments. This language conforms to the IDEA at 34 CFR 300.502(b)(4).
- ▶ Added Section 56330 specifying the steps to be taken by local educational agencies when interpreting assessment data for the purpose of determining if a child is an individual with exceptional needs and determining the educational needs of the child. This language conforms to the IDEA at 34 CFR 300.535.

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

- ▶ Amended Section 56340 specifying that the meeting to develop an individualized education program for the child determined eligible for special education and related services shall be in accordance with 34 CFR 300.343(b)(2).
- ▶ Amended Section 56341.5 clarifying that if the pupil does not attend the individualized education program meeting, the local educational agency shall take steps to ensure that the pupil's preferences and interests are considered at the meeting. This language conforms to the IDEA at 34 CFR 300.344(b)(2) and (3).
- ▶ Amended Section 56342 deleting the requirement that the individualized education program team submit a proposed recommendation for a new placement in a nonpublic, nonsectarian school to the local governing board of the school district and special education local plan area for review and recommendation regarding the cost of the placement. This language conforms to the IDEA at 34 CFR 300.401.
- ▶ Added Section 56342.1 spelling out what is current practice concerning the preliminary steps to be taken before a local educational agency places an individual with exceptional needs in, or refers an individual to, a nonpublic, nonsectarian school. This language conforms to the IDEA at 34 CFR 300.349(a)(1) and (2).
- ▶ Amended Section 56344 specifying that each school district, special education local plan area, or county office shall have an individualized education program in effect for each individual with exceptional needs within its jurisdiction at the beginning of each school year in accordance with 34 CFR 300.342(a) and (b).
- ▶ Amended Section 56347 requiring that each teacher and service provider who provides special education and/or related services to the pupil shall not only be knowledgeable of the content of the pupil's individualized education program, but also be informed of his or her specific responsibilities related to implementing a pupil's individualized education program and the specific accommodations, modifications, and supports that shall be provided for the pupil pursuant to 34 CFR 300.342(b)(2) and (3).
- ▶ Amended Section 56363.5 clarifying that a local educational agency cannot require parents to sign up or enroll in public insurance programs in order for their child to receive a free appropriate public education. This language conforms to the IDEA at 34 CFR 300.142(e)-(i).
- ▶ Amended Section 56365 requiring the California Department of Education to disseminate copies of applicable standards to each nonpublic, nonsectarian school and agency to which a local educational agency has referred or placed an individual with exceptional needs and to provide an opportunity for those nonpublic, nonsectarian schools and agencies to participate in the development and revision of state standards that apply to them. This language conforms to the IDEA at 34 CFR 300.402 and 300.401.
- ▶ Amended Section 56381 clarifying what needs to be considered in the reassessment of an individual with exceptional needs. The language includes assessments and information provided by the parents of the pupil. In addition, the amendment specifies that an assessment is not required before the termination of a pupil's eligibility under Part 30 of the Education Code due to graduation with a regular high school diploma or the pupil exceeds the age eligibility in Section 56026. The language also specifies that the individualized education program team and other referenced professionals may conduct the review of existing assessment and related data without a meeting. This language conforms to the IDEA at 20 USC 1414(c) and 34 CFR 300.533(a)(1)(i) and (b) and 300.534(c)(2).

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

- ▶ Added Section 56383 clarifying that after an individual with exceptional needs enters a nonpublic, nonsectarian school, any meetings to review or revise the pupil's individualized education program may be initiated and conducted by the nonpublic, nonsectarian school at the discretion of the local educational agency in accordance with federal regulations. This language conforms to the IDEA at 34 CFR 300.349(b).
- ▶ Added Section 56385 specifying that individuals with exceptional needs shall be included in general statewide and districtwide assessment programs, with appropriate accommodations when necessary; and provides that the California Department of Education shall make the specified information available to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled pupils.
- ▶ Amended Section 56426.9 clarifying that each local educational agency must ensure that each child participating in early childhood special education services, and who will participate in preschool programs, experiences a smooth and effective transition to those preschool programs. In addition, each local educational agency must, by the third birthday of the child, ensure that an individualized education program or individualized family service plan has been developed and is being implemented for the child consistent with a free appropriate public education for children beginning at age three. Also, each local educational agency must participate in transition planning conferences arranged by the designated lead agency. This language conforms to the IDEA at 20 USC 1437 and 34 CFR 300.121(c), 300.132, and 300.342.
- ▶ Repealed and added Section 56500.2 clarifying and citing the authority for the investigation of complaints filed with the California Department of Education regarding special education and related services. This language conforms to the IDEA at 34 CFR 300.660-662.
- ▶ Added Section 56500.4 specifying, under procedural safeguards, when written prior notice shall be given to parents or guardians. This language conforms to the IDEA at 20 USC 1415(b)(3) and (4) and 34 CFR 300.503.
- ▶ Added Section 56500.5 specifying that written prior notice shall be given to parents or guardians of an individual with exceptional needs that their child will be graduating from high school with a regular high school diploma because graduation from high school with a regular diploma constitutes a change in placement. This language conforms to the IDEA at 34 CFR 300.122(a)(3)(iii).
- ▶ Amended Section 56501 providing that a parent and local educational agency may initiate the due process hearing procedures when there is a disagreement between a parent and local educational agency regarding the availability of a program appropriate for the child, including the question of financial responsibility. The section was also amended to clarify that the mediation process is not to be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part 30 of the Education Code or under the IDEA. This language conforms to the IDEA at 34 CFR 300.403(b) and 300.506(b).
- ▶ Amended Section 56502 requiring the Superintendent of Public Instruction to develop a model form to assist parents in filing a request for due process. This language conforms to the IDEA at 34 CFR 300.507(c)(3).
- ▶ Amended Section 56504.5 specifying that the California Department of Education shall contract with a single, nonprofit organization or entity for mediation conferences and due process hearings in accordance with 34 CFR 300.506.

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

► Amended Section 56505 clarifying that during a judicial proceeding regarding a due process hearing, the pupil shall remain in his or her present placement, except as provided in Section 49815.5, unless the public agency and the parent agree otherwise. In addition, if the decision of a due process hearing officer or state review official in an administrative appeal agrees with the pupil's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state or local agency and the parents. Language was also added to clarify that any party to a hearing has the right to a written or, at the option of the parents, electronic verbatim record of the hearing and electronic findings of fact and decisions. The amendment specifies that the record of the hearing and the findings of fact and decisions shall be provided at no cost to parents, and the findings and decisions shall be made available to the public "after any personally identifiable information has been deleted" consistent with federal law. Any party to a hearing also has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing. The amendment also specifies that nothing in Chapter 5 of Part 30 shall preclude a party aggrieved by the findings and decisions in a hearing from exercising the right to appeal the decision to a state court of competent jurisdiction or to a district court of the United States without regard to the amount in controversy. The amendment also provides that in any action brought under this provision, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant relief that the court determines to be appropriate. This language conforms to the IDEA at 34 CFR 300.509, 300.510, 300.512, and 300.514.

► Amended Section 56505.1 clarifying that a due process hearing officer can bar introduction of any documents or the testimony of any witnesses not disclosed to the hearing officer at least five business days prior to the hearing and bar introduction of any documents or the testimony of any witnesses "at the hearing without the consent of the other party" not disclosed to the parties at least five business days prior to the hearing. This language conforms to the IDEA at 34 CFR 300.509(a) and (b).

► Amended Section 56600 updating legislative intent for an ongoing comprehensive evaluation of special education programs under Part 30 in keeping with the purposes of the IDEA at 20 USC 1400(d).

► Added Section 56600.6 specifying that the Superintendent of Public Instruction shall ensure that pupil and program performance results are monitored at the state and local levels in order to comply with the IDEA. The amendment provides that, as necessary, other data may be collected to support the state's participation in national studies and evaluations described in 20 USC 1474(a). This language conforms to the IDEA at 20 USC 1412(a)(16).

► Added Section 56601.5 requiring each special education local plan area to annually report to the Superintendent of Public Instruction the number of pupils receiving special education services participating in the regular school and district assessments and the number participating in an alternate assessment process. This language conforms to the IDEA at 20 USC 1412(a)(17), 20 USC 1413(a)(6), and 34 CFR 300.138 and 300.139.

► Added Section 56602 changing the annual program evaluation to a biennial performance report to focus more on the performance outcomes of individuals with exceptional needs and to comply with the timeline of the IDEA. This language conforms to the IDEA at 20 USC 1412(a)(16) and 34 CFR 80.40.

► Repealed sections 56600.5, 56602, and 56603 because they were outdated.

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

AB 1859 also amended sections 48902, 48904.3, and 48911, pertaining to discipline matters, and repealed and added Section 48915.5, pertaining to the suspension and expulsion of individuals with exceptional needs enrolled in special education programs. Specifically, the new Section 48915.5 aligns the California Education Code provisions for suspension and expulsion of individuals with exceptional needs to the discipline provisions of 20 USC 1415(k) and 34 CFR 300.519 through 300.529. The section also specifies that a free appropriate public education for individuals with exceptional needs who are suspended or expelled from school shall be in accordance with 20 USC 1412(a)(1) and 34 CFR 300.121(d). It also provides that if an individual with exceptional needs is excluded from schoolbus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian provided that transportation is specified in the pupil's individualized education program. Section 48927 was added to bring the definition of terms used by the State Special Schools into conformity with general education provisions for the purposes of discipline under 20 USC 1415(k).

Section 49070 was amended, relative to correcting or removing and destroying information from the written records of the pupil, with the addition of the phrase "and so inform the parent in writing." This language conforms to the IDEA at 20 USC 1412(a)(8) and 34 CFR 300.569(a) and (b).

Section 60640 was amended, relative to the Standardized Testing and Reporting (STAR) program, to emphasize the inclusion of individuals with disabilities in the STAR testing and reporting rather than focus on exclusion. The amendment also eliminated the reference to the number of individuals with exceptional needs exempted from the testing requirement and includes the number of pupils who received an alternate assessment in grades 2 to 11, inclusive, in the school district, in addition to the number of pupils who took an achievement test. This language conforms to 20 USC 1412(a)(17) and 34 CFR 300.138.

Assembly Bill 1895 (Wright) added Section 56046 to Part 30 of the Education Code, a measure that allows an employee or contractor of a school district, county office of education, or special education local plan area to assist a parent or guardian of an individual with exceptional needs to obtain services or accommodations for that pupil without interference from the employee's or contractor's employer.

Specifically, AB 1895:

- Prohibits an employee from directly or indirectly using or attempting to use his or her official authority or influence of the employee for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce any person to assist a parent or guardian of a pupil with exceptional needs in obtaining services or accommodations for that pupil.
- Provides that if a person believes an employee is in violation of this law, that person may file a complaint under the "Uniform Complaint Procedures" as set forth in Title 5 of the California Code of Regulations.
- Declares that nothing in Section 56046 shall be construed to limit or alter the right or duty of a public school official to direct or discipline an employee or contractor or

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

prevent a local educational agency from enforcing a law or regulation regarding conflicts of interest, incompatible activities, or the confidentiality of pupil records.

- Declares that nothing in the section shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.
- Provides that a school employee's or contractor's assistance offered to a parent or guardian of a pupil with exceptional needs to obtain services or accommodations for that pupil may not interfere with the school employee's or contractor's regular duties for the local educational agency.

Assembly Bill 2326 (Frommer) added Section 56351.7 to Part 30 of the Education Code requiring the Superintendent of Public Instruction to form an advisory task force, with prescribed membership approved by the State Board of Education, to develop standards for the mastery of the Braille code as a child progresses through kindergarten to grade 12, inclusive.

The Governor issued a "signing message" to members of the California Legislature about his intent. The message said, in part, that the Governor was "signing the bill with the understanding that the proposed standards will not be implemented on either a mandatory or a voluntary basis until its fiscal implications are fully understood. I am also directing the State Board of Education not to act upon any proposed standards arising from this measure until its fiscal implications can be weighed against educational and state resources."

Assembly Bill 2781 (Oropeza), an urgency measure making changes to implement the education portions of the Budget Act of 2002, amended Section 56826.158 of Part 30 of the Education Code pertaining to the special education funding formula.

Section 56826.158 requires the Superintendent of Public Instruction, for purposes of calculating funding for each special education local plan area, to determine the statewide average daily attendance (ADA) for the 2000-01 fiscal year, to increase the amount per unit of ADA for the 2001-02 fiscal year by a specified quotient, and to increase the statewide target per unit of ADA for the 2001-02 fiscal year. The amendment requires that determination and those increases also be made for the 2001-02 and 2002-03 fiscal years, respectively, and would make conforming changes.

AB 2781 also amended Section 5701.3 of the Welfare and Institutions Code to prohibit the funding provisions related to financing community mental health services from affecting the responsibility of the state to fund psychotherapy and other mental health services for disabled pupils required by law and would require the state to reimburse counties for all allowable costs incurred by counties in providing those services to disabled pupils. The provision requires the state to provide reimbursement for those services through an appropriation included in either the annual Budget Act or other statute.

The measure also provides that county reimbursement claims submitted to the State Controller for reimbursement for services associated with providing allowable mental health treatment services required by an individualized education program in fiscal years up to and including the 2000-01 fiscal year are not subject to dispute by the Controller's office regarding

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

the percentage of reimbursement claimed by any county. The provision would prohibit a county that previously submitted a reimbursement claim for services delivered in 2000-01 fiscal year or prior for less than 100 percent of the allowable mental health treatment services for special education pupils from amending its claim for a higher percentage of those same allowable costs.

Assembly Bill 3034 (Assembly Committee on Judiciary), a “maintenance of the codes” measure, made a technical, nonsubstantive amendment to Section 56404 of Part 30 of the Education Code regarding Family Empowerment Centers on Disability.

Summary of Special Education Law Changes in 2002

from the Introduction to the
25th Edition of the California Special Education Programs
A Composite Of Laws

Highlights of The Budget Act of 2002-2003

Assembly Bill 425, (Chapter 379, Statutes of 2002), the Budget Act of 2002-2003, provided special education programs with a 2.0 percent cost-of-living adjustment (COLA).

Budget Item 6110-161-0001, in part, provided a General Fund appropriation for special education programs in the amount of \$2,711,073,000 (which includes the COLA), including \$71,181,000 for the Early Education Program, minus \$14,395,000 reimbursements for the Early Education Program (Part C). The budget allocated \$49.9 million to provide funding for program growth and allocated \$72.4 million for COLAs for special education instruction, including low-incidence disabilities, Project Workability I, regional occupational centers and programs, and nonpublic schools/licensed children's institutions (NPS/LCIs). A COLA in the amount of \$1.4 million was also provided for the Early Education Program for individuals with exceptional needs.

The budget also provided an additional \$8.2 million General Fund augmentation for special education to be used to provide a permanent increase to the base funding level for the program.

As part of the mandated cost settlement required by Senate Bill 982 (Chapter 203, Statutes of 2001), the budget provides \$25 million to fully fund the second of ten annual installments. This is one-time funding to be allocated to school districts on a per-pupil basis.

The NPS/LCI funding was capped at \$114.8 million, plus the COLA, for the 2002-03 fiscal year.

Budget Item 6110-161-0890 provided a total of \$798,369,000 for special education programs from the federal Individuals with Disabilities Education Act.

The complete budget items for special education programs and State Special Schools and Centers for fiscal year 2002-2003 may be found on pages J-1 through J-8.